

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN**

SARAH,

Plaintiff,

v.

Google LLC, YouTube LLC, James JACKSON,  
also known online as “ONISION,” and LUCAS  
JACKSON, formerly known online as  
“LAINEYBOT,” “LAINEY” and “KAI,”

Defendants.

CASE No: 1:23-cv-00223-HYJ-SJB

HON. HALA Y. JARBOU

**MOTION BY DEFENDANTS GOOGLE LLC AND YOUTUBE, LLC TO TRANSFER TO  
THE NORTHERN DISTRICT OF CALIFORNIA**

Pursuant to 28 U.S.C. 1404(a), Defendants Google LLC and YouTube, LLC move this Court to transfer Plaintiff’s Complaint in its entirety to the Northern District of California, San Jose Division. As set out more fully in the accompanying Brief in Support of this Motion, Plaintiff’s claims are subject to a binding forum selection clause which requires transfer to the Northern District of California, where Plaintiff and the remaining individual defendants have agreed to litigate any disputes subject to the governing forum-selection agreement.

Pursuant to Local Rule 7.1(d), counsel for Defendants certifies that he requested Plaintiff’s and individual Defendants’ concurrence in this Motion via email and phone correspondence. Plaintiff does not concur in the relief sought in this Motion and intends to file an opposition. Individual Defendants do not concur in the relief sought in this Motion.

Respectfully submitted,

**Clark Hill PLC**

By: /s/ Christopher M. Trebilcock  
Christopher M. Trebilcock  
500 Woodward Avenue, Suite 3500  
Detroit, Michigan 48226  
ctrebilcock@clarkhill.com  
(313) 965-8300

DATE: May 19, 2023

**Wilson Sonsini Goodrich & Rosati  
Professional Corporation**

By: /s/ Brian M. Willen

Brian M. Willen  
Benjamin Margo  
1301 Avenue of the Americas, 40th Floor  
New York, NY 10019-6022  
(212) 999-5800  
bwillen@wsgr.com  
bmargo@wsgr.com

DATE: May 19, 2023

Attorneys for Defendants  
GOOGLE LLC and YOUTUBE, LLC

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**BRIEF IN SUPPORT OF MOTION BY DEFENDANTS GOOGLE LLC AND YOUTUBE,  
LLC TO TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA**

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## **I. INTRODUCTION**

Defendants Google LLC and YouTube, LLC (collectively, “YouTube”) move under 28 U.S.C. § 1404(a) to transfer this case to the San Jose Division of the Northern District of California pursuant to the parties’ governing forum-selection agreement.

Plaintiff’s claims against YouTube fail as a matter of law, as explained in YouTube’s concurrently filed motion to dismiss. But this case faces a threshold problem: Plaintiff filed suit in the wrong place. When Plaintiff created a YouTube account, she agreed to YouTube’s Terms of Service (“TOS” or “Terms”), which includes an express forum-selection provision that requires litigation of cases like this to proceed in California.

The Supreme Court has made clear that “a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases.” *Atl. Marine Constr. Co. v. United States Dist. Ct. for the W. Dist. of Tex.*, 571 U.S. 49, 63 (2013) (citation omitted). And an unbroken line of cases have held that YouTube’s forum-selection clause is valid and enforceable, and have applied it to transfer cases like this one to the parties’ designated federal forum—the Northern District of California. *See, e.g., Trump v. Youtube, LLC*, 2021 U.S. Dist. LEXIS 258273, at \*36 (S.D. Fla. Oct. 6, 2021).

The same result is warranted here. Plaintiff’s claims arise out of the alleged wrongdoing of Defendants James Jackson (“Onision”) and Lucas Jackson (“Lainey”) (collectively “the Jacksons” or “Jackson Defendants”). Plaintiff alleges that as a minor she was “groomed” by the Jacksons, who enticed her to make multiple visits to them in Washington State where eventually, allegedly, Onision raped her. Plaintiff does not claim that YouTube was involved in the Jacksons’ grooming efforts or knew anything about those efforts. Nonetheless, Plaintiff sued YouTube, alleging that Onision’s popular YouTube channel was how she first learned of him. Plaintiff seeks to hold YouTube liable for hosting (or failing to remove) Onision’s videos and for allowing him to earn



advertising revenue from his channel.

The TOS that Plaintiff agreed to is clear about where such disputes belong: “All claims arising out of or relating to these terms or the [YouTube] Service ... will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA.” While legally meritless as to YouTube, for the reasons explained in YouTube’s concurrently filed motion to dismiss, Plaintiff’s claims, as pleaded, fall within this mandatory provision. Accordingly, Plaintiff’s “choice of forum merits no weight,” *Atl. Marine*, 571 U.S. at 63, and this case should be transferred to the Northern District of California pursuant to 28 U.S.C. § 1404(a).

## **II. BACKGROUND**

### **A. YouTube And Its Terms of Service**

Google owns and operates YouTube, an online video service with billions of users and millions of user-created “channels” offering a vast array of video content. Compl. (Dkt. 1) ¶¶ 8-11. YouTube users can create and post videos to their channels, which other users can view. YouTube allows visitors to access and use its service—including by creating channels and uploading videos free of charge—provided they agree to its Terms. *See id.* ¶¶ 25-26, 86-87.

To create a YouTube channel and upload content to YouTube, every user is required to accept the TOS. Declaration of Raquel Small (“Decl.”) ¶¶ 3, 7 & Ex. A (<https://www.youtube.com/t/terms> (eff. Jan. 5, 2022)). For example, in the current version of the sign-up process, when users create a channel, they are presented with the text: “By tapping Create Channel you agree to YouTube’s Terms of Service.” *Id.* ¶ 7. The phrase “YouTube’s Terms of Service” appears in blue font, and contains a hyperlink to the complete text of the YouTube Terms. *Id.* By clicking “Create Channel,” users agree to abide by the YouTube Terms. *Id.*

At all times relevant here, the TOS included an express forum-selection clause designating Northern California courts as the exclusive venue for litigation arising out of or relating to the

YouTube Service. Decl. ¶ 4. This is the current version:

All claims arising out of or relating to these terms or the Service will be governed by California law, except California's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts.

Decl. ¶ 4 & Ex. A at 15; *see also* Decl. ¶ 5 & Ex. B (similar language in effect on February 23, 2013), Ex. C (same on February 6, 2015); Ex. D (same in November 2019). “Service” is a defined term in the Terms that encompasses “the YouTube platform and the products, services and features we make available to you as part of the platform[.]” Ex. A at 2. Santa Clara County, California lies within the San Jose Division of the Northern District of California. 28 U.S.C. § 84(a); N.D. Cal. Civil L.R. 3-2(e). Because many millions of users create channels and upload videos on YouTube’s website free of charge, the forum-selection clause is necessary to manage the costs of litigation and reduce the inconvenience to YouTube that would arise if the company were forced to litigate claims all over the world. Decl. ¶ 6; *accord Song fi, Inc. v. Google Inc.*, 72 F. Supp. 3d 53, 64 (D.D.C. 2014).

At all times relevant here, the TOS also provided that YouTube may modify the Terms over time. Exs. A-D. Modifications of the Terms only apply going forward. *Id.*

### **B. Plaintiff and the Jackson Defendants Agreed to the Terms**

Plaintiff created YouTube channels on February 23, 2013 and February 6, 2015. Decl. ¶¶ 8-9. In doing so, she affirmatively agreed to the TOS (*id.*) including its forum-selection clause which then designated “a court of competent jurisdiction located in Santa Clara County, California” (Exs. B-C) and now similarly designates the “federal or state courts of Santa Clara County, California, USA” (Ex. A). At the time she created the channels she was a minor, according to her Complaint. Compl. (¶ 41); Decl. ¶ 8. She later reaffirmed her agreement to the TOS after reaching the age of majority. Compl. ¶ 41; Decl. ¶ 9. On some occasions, YouTube blocks a user

from using the service until they affirmatively click a button to reaffirm their agreement to the TOS. Decl. ¶ 9. Plaintiff did so on November 6, 2019 and again on November 25, 2019. *Id.* On these occasions, Sarah was 19 years old. Compl. ¶ 41. The version of the TOS that Plaintiff agreed to on those dates appears as Exhibit D. Decl. ¶ 5.

The Jackson Defendants also created YouTube channels that they used to post videos to YouTube, and in the process of doing so they also affirmatively clicked a button indicating their agreement to be bound by YouTube’s Terms, including the forum-selection clause. *See* Compl. ¶¶ 8 & 102 (alleging that James Jackson created his first YouTube channel in 2006), 27 (listing “several YouTube channels” run by Onision), 32 (“Lainey ... became a part of the Onision channel”), 147 (“Onision’s YouTube channels gave him ... fame”); Decl. ¶ 7.

**C. Plaintiff’s Claims Arise Out of and Relate to Both the YouTube Service and the Terms**

The gravamen of Plaintiff’s claims against YouTube is that YouTube allowed Onision to use “YouTube channels [that] gave him the fame, platform, and megaphone to reach countless people,” including “young teenage girls” (Compl. ¶ 147), and then “did nothing to enforce their Terms of Service and Community Guidelines” after learning about concerns about Onision (¶ 126). In connection with each of its claims against YouTube, the Complaint alleges that Onision “abuse[d]” YouTube’s “Terms of Service.” *Id.* ¶¶ 363 (Count II), 383 (Count III), 410 (Count IV).

Plaintiff filed suit on March 2, 2023. On March 31, 2023, the Jackson Defendants filed their motion to dismiss or in the alternative to transfer to the Western District of Washington (Dkt. 15; *see also* Dkts. 16, 21), the latter of which YouTube opposed on April 20, 2023 (Dkt. 26). In addition to filing this motion to transfer, YouTube has concurrently filed a motion to dismiss the Complaint under Fed. R. Civ. P. 12(b)(6).

### III. ARGUMENT

“[A] forum-selection clause may be enforced by a motion to transfer under § 1404(a)[.]” *Atl. Marine*, 571 U.S. at 52; *accord* 28 U.S.C. § 1404(a) (permitting transfer “to any district . . . to which all parties have consented”). “When a defendant files such a motion, . . . a district court should transfer the case unless extraordinary circumstances unrelated to the convenience of the parties clearly disfavor a transfer.” *Atl. Marine*, 571 U.S. at 52; *see also id.* at 62-63 (“a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases”) (citation omitted); *accord Quicken Loans Inc. v. RE/MAX, LLC*, 216 F. Supp. 3d 828, 832 (E.D. Mich. 2016) (same) (quoting *Atl. Marine*); *Complete Med. Sales, Inc. v. Genoray Am., Inc.*, 2020 U.S. Dist. LEXIS 125230, at \*5-6 (E.D. Mich. July 16, 2020) (“Pursuant to § 1404, contracts containing enforceable forum selection clauses should be given controlling weight in all but the most exceptional cases.”) (internal quotation marks and citation omitted); *Lukasak v. Premier Sports Events, LLC*, 2014 U.S. Dist. LEXIS 207078, at \*5 (W.D. Mich. Apr. 2, 2020) (“when a forum-selection clause exists, it must be given controlling weight”) (*citing Atl. Marine*, 571 U.S. at 63).

Because a forum-selection clause “represents the parties’ agreement as to the most proper forum,” the presence of such a clause requires that certain “adjustments” be made to the regular § 1404(a) analysis. *Atl. Marine*, 571 U.S. at 62-63 (citation omitted). “[A]rguments about the parties’ private interests are given no weight. Because the parties agreed to a particular forum, ‘they waive the right to challenge the preselected forum as inconvenient or less convenient . . . .’” *Rosta AG v. Lovejoy, Inc.*, 2018 U.S. Dist. LEXIS 246286, at \*11 (W.D. Mich. Apr. 23, 2018) (quoting *Atl. Marine*, 571 U.S. at 64); *accord Lukasak*, 2014 U.S. Dist. LEXIS 207078, at \*5 (“the court can consider that the relevant private-interest factors weigh entirely in favor of the preselected forum”). In such cases, the plaintiff “bear[s] the burden of showing why the court should not transfer the

case to the forum to which the parties agreed.” *Atl. Marine*, 571 U.S. at 64; *see also Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991) (party seeking to avoid a forum-selection clause bears a “heavy burden of proof”) (citation omitted); *Rosta AG*, 2018 U.S. Dist. LEXIS 246286, at \*6 (“Generally, the party opposing the enforcement of a forum-selection clause bears the burden of showing why the clause should not be enforced.”).

Applying these principles, this Court—and other courts in this Circuit—routinely enforce forum-selection clauses. *See, e.g., Quicken Loans*, 216 F. Supp. 3d at 834; *Rosta AG v. Lovejoy, Inc.*, 2018 U.S. Dist. LEXIS 246286, at \*11; *Complete Med. Sales*, 2020 U.S. Dist. LEXIS 125230, at \*9; *Lukasak*, 2014 U.S. Dist. LEXIS 207078, at \*5; *Family Wireless #1, LLC v. Auto. Techs., Inc.*, 2015 U.S. Dist. LEXIS 115810, at \*26 (E.D. Mich. Sept. 1, 2015); *Cinetic DyAG Corp. v. Forte Automation Sys.*, 2008 U.S. Dist. LEXIS 90968, at \*23-24 (E.D. Mich. Nov. 6, 2008). The same result is required here: Plaintiff’s claims are governed by a binding forum-selection clause; that provision requires that this litigation proceed in the Northern District of California; and no extraordinary circumstances preclude a transfer to the parties’ designated federal forum.

#### **A. The Forum-Selection Clause Governs Plaintiff’s Claims**

Plaintiff, by creating her YouTube channel, affirmatively agreed to YouTube’s TOS after reaching the age of majority, including its forum-selection clause. *See infra* § II.B.

The governing forum-selection clause applies to “[a]ll claims arising out of or relating to these terms or the Service[.]” Ex. A at 15. As noted above, the term “Service” is expressly defined as “the YouTube platform and the products, services and features we make available to [users].” *Id.* at 2. The phrase “arising out of” is interpreted broadly and covers “all causes of action arising directly or indirectly from the business relationship evidenced by the contract.” *Stewart Org., Inc. v. Ricoh Corp.*, 810 F.2d 1066, 1070 (11th Cir. 1987), *aff’d*, 487 U.S. 22 (1988) (enforcing forum-selection clause applicable to all disputes “arising under or in connection with this Agreement”);

*accord Huffman v. Hilltop Cos., LLC*, 747 F.3d 391, 395 (6th Cir. 2014) (“language indicating that ‘[a]ny Claim arising out of or relating to this Agreement, or the breach thereof’ will be submitted to arbitration is not only far-reaching but also very similar to other arbitration clauses that this court has described as ‘broad’”).

Plaintiff’s claims fall within the clause’s broad scope. To be sure, as discussed in YouTube’s concurrently filed Motion to Dismiss, Plaintiff has no viable cause of action against YouTube and all of the alleged communications between the Jacksons and Sarah that occurred during the alleged grooming process took place off of YouTube. Compl. ¶¶ 178-315. Nevertheless, Plaintiff’s claims against YouTube, as framed in her Complaint, arise from allegations about both her and the Jackson Defendants’ use of YouTube and the choices YouTube is said to have made in policing the Jacksons’ YouTube accounts. *Id.* ¶¶ 14, 18, 21-29, 35-37, 120-127, 176-177, 334-337. Such claims “aris[e] out of or relat[e]” to the YouTube service. Decl. ¶ 4 & Ex. A at 15.

Plaintiff also affirmatively alleges that her claims arise out of or relate to the Terms themselves. Plaintiff repeatedly complains that YouTube “did nothing to enforce their Terms of Service” by removing Onision or his videos from the platform. Compl. ¶ 126; *see also id.* ¶¶ 35, 363, 383, 410. Complaints about YouTube’s decisions about how to enforce its TOS fall squarely within the forum-selection clause. *See, e.g., Trump*, 2021 U.S. Dist. LEXIS 258273, at \*32 (holding that claims challenging YouTube’s deactivation of user accounts for violations of its TOS were subject to the forum-selection clause where they “explicitly reference the policies of YouTube as the basis for each claim”); *Loomer v. Facebook, Inc.*, 2020 U.S. Dist. LEXIS 99430, at \*8 (S.D. Fla. Apr. 13, 2020) (holding that claims challenging Facebook’s deactivation of user accounts “arise[] out of or relate[] to” Facebook’s Terms of Service).

In sum, the broad language of the forum-selection clause readily encompasses Plaintiff’s

claims.

**B. YouTube’s Forum-Selection Clause Is Mandatory And Enforceable**

Forum-selection clauses are “presumptively valid and enforceable.” *Smith v. AEGON Cos. Pension Plan*, 769 F.3d 922, 930 (6th Cir. 2014); accord *Cinetic DyAG Corp.*, 2008 U.S. Dist. LEXIS 90968, at \*23-24 (“federal, Michigan, and Illinois law all favor the enforcement of forum selection clauses and consider such clauses as presumptively valid”). They should be enforced unless the party resisting the clause “could clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching.” *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972); accord *Carnival Cruise Lines v. Shute*, 499 U.S. at 593 (enforcing a “reasonable forum clause in a form contract” on the back of a cruise ticket). Courts have consistently held forum-selection clauses in standard-form online agreements—like the YouTube TOS that Plaintiff accepted (Decl. ¶ 9)—to be “valid and enforceable.” *Segal v. Amazon.com, Inc.*, 763 F. Supp. 2d 1367, 1369 (S.D. Fla. 2011) (enforcing forum-selection clause in terms accepted by plaintiffs as a condition of creating Amazon account); accord *Loomer*, 2020 U.S. Dist. LEXIS 99430, at \*6-8 (same for Facebook’s Terms of Service); *Abid v. Google, Inc.*, 2017 U.S. Dist. LEXIS 224173, at \*12 (M.D.N.C. Oct. 12, 2017) (same for Terms of Service governing Google Ad Words), *adopted*, 2018 U.S. Dist. LEXIS 228730 (M.D.N.C. Feb. 13, 2018); *Rudgayzer v. Google, Inc.*, 986 F. Supp. 2d 151, 156 (E.D.N.Y. 2013) (same for Terms of Service governing Gmail), *order withdrawn on other grounds*, 2014 U.S. Dist. LEXIS 197511, at \*12 (E.D.N.Y. Feb. 10, 2014); *Davis v. Avvo, Inc.*, 2011 U.S. Dist. LEXIS 103332, at \*6-14 (M.D. Fla. Sept. 13, 2011) (same for Terms of Service of Avvo.com); cf. *Temple v. Best Rate Holdings LLC*, 360 F. Supp. 3d 1289, 1304-05 (M.D. Fla. 2018) (enforcing arbitration clause found in website Terms and Conditions where user was cautioned that he accepted the terms by clicking a button labeled “Get a Quote”).

YouTube’s forum-selection clause, in particular, has repeatedly been applied to order the transfer of similar claims. Indeed, every federal court that has considered a transfer motion based on YouTube’s TOS has done so. *See Song fi*, 72 F. Supp. 3d at 62-64 (“it is not improper for YouTube to require that claims against it be brought in the non-arbitrary forum where it resides”); *Bowen v. YouTube, Inc.*, 2008 U.S. Dist. LEXIS 122337, at \*6 (W.D. Wash. Apr. 15, 2008) (“The Court concludes that the forum selection clause herein is valid [and] enforceable.”).<sup>1</sup>

That unbroken line of cases reflects the mandatory nature of the forum-selection provision, which states that covered claims “will be litigated *exclusively* in the federal or state courts of Santa Clara County, California[.]” Ex. A at 15 (emphasis added); *see Bowen*, 2008 U.S. Dist. LEXIS 122337, at \*6 (YouTube’s clause is “cast in mandatory terms”); *accord Complete Med. Sales*, 2020 U.S. Dist. LEXIS 125230, at \*9 (transferring case pursuant to a mandatory forum-selection clause because “‘will follow’ implies a mandatory condition”); *DeLima v. Google, Inc.*, 561 F. Supp. 3d 123, 138 (D.N.H. 2021) (“Any future claim arising out of the AdSense or similar

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<sup>1</sup> *See also, e.g., Trump*, 2021 U.S. Dist. LEXIS 258273, at \*25, 38 n.8 (“the Court finds that the application of the forum-selection clause in this case ... does not contravene public policy,” and “the Court agrees with other courts that have found that the bargaining power between social media companies and their customers does not render a forum-selection clause to be unconscionable”); *Kifle v. YouTube LLC*, 2021 U.S. Dist. LEXIS 168267, at \*9 (N.D. Ga. Mar. 12, 2021) (transferring case brought by YouTube user despite Plaintiff “point[ing] to evidence that California will be a less convenient forum for him”); *Lewis, v. Google, Inc.*, 2019 U.S. Dist. LEXIS 223263, at \*6 (D. Co. Dec. 31, 2019) (“Plaintiff has failed to cast any doubt on the validity of the Forum Selection Clause, and so the *Atlantic Marine* analysis applies here.”); *Ramani v. YouTube, LLC*, 2019 U.S. Dist. LEXIS 197106, at \*4 (S.D.N.Y. Nov. 12, 2019) (“The Court concludes that YouTube’s forum selection clause controls and transfers the action to the United States District Court for the Northern District of California.”); *Muhammad v. YouTube, LLC*, 2019 U.S. Dist. LEXIS 92358, at \*7-8 (M.D. La. June 3, 2019) (finding “no evidence or jurisprudence to show that the forum-selection clause was induced by fraud or overreaching”); *Seaman v. YouTube, LLC*, No. 3:18-cv-833-HEH, Dkt. 20 at 6 (E.D. Va. Apr. 5, 2019) (finding no oppression or surprise); *Biltz v. Google, Inc.*, 2018 U.S. Dist. LEXIS 112632, at \*12-16 (D. Haw. July 6, 2018) (finding no fraud or overreaching); *Kijimoto v. YouTube, LLC*, 2018 U.S. Dist. LEXIS 225915, at \*5-9 (C.D. Cal. Jan. 30, 2018) (holding that “the forum-selection clause of the TOS is controlling”).



agreement for Google-owned services, however, must be brought in the Northern District of California as a result of the presumptively enforceable and mandatory forum selection clause in that agreement and Google and YouTube’s general terms of service.”); *Rudgayzer*, 986 F. Supp. 2d at 156 (forum-selection clause in Google’s TOS was “plainly mandatory” where it designated an “exclusive jurisdiction” for litigation).

**C. Plaintiff Cannot Carry The Heavy Burden Necessary To Overcome The Forum-Selection Clause**

To prevent the transfer of a case like this one involving a valid forum-selection clause, Plaintiff would need to “bear the burden of showing that public-interest factors *overwhelmingly* disfavor a transfer.” *Atl. Marine*, 571 U.S. at 66 (emphasis added); *see also Lukasak*, 2014 U.S. Dist. LEXIS 207078, at \*9 (“The final consideration before transfer is whether any overwhelming public-interest factors should overcome the forum-selection clause such that transfer would be inappropriate.”); *Complete Med. Sales*, 2020 U.S. Dist. LEXIS 125230, at \*13 (transferring case where “Plaintiff has not met its burden of articulating any ‘exceptional’ reason for why the forum selection clause should not be enforced”); *Transp. Sys., LLC v. Pace Runners, Inc.*, 2018 U.S. Dist. LEXIS 130262, at \*6 (E.D. Mich. Aug. 3, 2018) (“Courts have historically favored enforcing choice of forum clauses unless there is a serious issue that would result in an injustice.”). She cannot do so. This is not among the “rare[]” circumstances where public-interest factors can “defeat a transfer motion[.]” *Atl. Marine*, 571 U.S. at 64. Nor can Plaintiff invoke her private interests to keep her claims in this District. “When parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation. A court accordingly must deem the private-interest factors to weigh entirely in favor of the preselected forum.” *Id.*

In short, under the clear terms of the governing agreement, the parties agreed to resolve

claims like these in a different forum. By filing in this Court, Plaintiff disregarded that agreement, and a transfer is required.<sup>2</sup>

### **CONCLUSION**

For these reasons, the Court should apply the governing forum-selection provision and transfer this case to the San Jose Division of the Northern District of California.

Respectfully submitted,

**Clark Hill PLC**

By: /s/ Christopher M. Trebilcock  
Christopher M. Trebilcock  
500 Woodward Avenue, Suite 3500  
Detroit, Michigan 48226  
ctrebilcock@clarkhill.com  
(313) 965-8300

DATE: May 19, 2023

**Wilson Sonsini Goodrich & Rosati  
Professional Corporation**

By: /s/ Brian M. Willen  
Brian M. Willen  
Benjamin Margo  
1301 Avenue of the Americas, 40th Floor  
New York, NY 10019-6022  
(212) 999-5800  
bwillen@wsgr.com  
bmargo@wsgr.com

DATE: May 19, 2023

Attorneys for Defendants  
GOOGLE LLC and YOUTUBE, LLC

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<sup>2</sup> Under Section 1404(a), the Court has discretion to transfer the entire case, including the claims against the Jackson Defendants, who also agreed to the forum-selection clause. *See supra* § II.B. The Court could also exercise its discretion to sever Plaintiff's claims against YouTube under Fed. R. Civ. P. 21 and transfer only those claims. *See, e.g., In re Rolls Royce Corp.*, 775 F.3d 671, 681 (5th Cir. 2014) (granting mandamus petition to require district court to sever and transfer claims); *In re Howmedica Osteonics Corp.*, 867 F.3d 390, 411 (3d Cir. 2017) (same); *Valspar Corp. v. E.I. DuPont de Nemours & Co.*, 15 F. Supp. 3d 928, 932 (D. Minn. 2014), *aff'd*, 873 F.3d 185 (3d Cir. 2017) ("If the Court were to conclude the pertinent factors render transfer appropriate under § 1404(a), then severance, too, would be proper.").

**CERTIFICATE OF COMPLIANCE WITH L. Civ. R. 7.2(b)(i)**

This document complies with the limitation set forth in W.D. Mich. L. Civ. R 7.3(b)(i) because the brief contains 3,687 words, excluding parts of the brief exempted by Local Rule 7.3(b)(ii) and (c). This word count was generated using Microsoft Word for Microsoft 365.

By: /s/ Christopher M. Trebilcock  
Christopher M. Trebilcock

**CERTIFICATE OF SERVICE**

I hereby certify that on May 19, 2023, I caused the foregoing paper to be electronically filed with the Clerk of Court using the ECF system, which will send notification to counsel of record.

By: /s/ Christopher M. Trebilcock  
Christopher M. Trebilcock

# EXHIBIT 1

**DECLARATION OF RAQUEL SMALL**

I, Raquel Small, do state and declare as follows:

1. I am a Program Manager on the YouTube legal team. As part of my role, I have personal knowledge of YouTube's Terms of Service, including the facts described below, and, if called as a witness, could and would testify competently thereto.

2. YouTube offers an online video service where users around the world can share and watch videos and related content. With limited exceptions, YouTube is a free service and does not charge users to upload or view videos. To create a safe and vibrant community for its users, YouTube enforces rules prohibiting content that may be harmful or undesirable.

3. Use of YouTube's services is governed by a written Terms of Service Agreement ("TOS" or "Terms"). A true and accurate copy of the current TOS is attached hereto as **Exhibit A**. The TOS are also available at <[www.youtube.com/t/terms](http://www.youtube.com/t/terms)>, on the sidebar of the YouTube homepage, <[www.youtube.com](http://www.youtube.com)>, and elsewhere throughout the YouTube website. YouTube's TOS have been modified from time to time over the years.

4. The current version of the TOS, and all past versions of the TOS going back to February 2009, require that disputes between YouTube and its users arising out of their use of YouTube be litigated solely in Santa Clara County, California. The current version of the Terms provides as follows: "All claims arising out of or relating to these terms or the Service will be governed by California law, except California's conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts." This exact language was included in the previous three versions of the TOS, and has been effective between December 10, 2019 and the present.

5. As mentioned above, previous versions include similar language. For example, the version of the TOS in force on February 23, 2013 provides as follows in Section 14: "Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County,

California.” A true and correct copy is attached as **Exhibit B**. The version of the TOS in force on February 6, 2015 contains identical forum-selection language. A true and correct copy of that version of the TOS is attached as **Exhibit C**. The version in force in November 2019 also includes identical forum-selection language. That version of the TOS is publicly available at <<https://www.youtube.com/t/terms?archive=20180525>>, and a true and accurate copy is attached as **Exhibit D**.

6. Because many millions of users from around the world use YouTube free of charge each day, the forum-selection clause is necessary to manage the costs of litigation and reduce the burden to YouTube of litigating all over the world.

7. Users are able to post content to their own “channels”. In order to create a YouTube channel, users are required to accept the TOS. Currently, users are informed that “By tapping Create Channel you agree to YouTube’s Terms of Service.” The words “YouTube’s Terms of Service” appear in blue font and include a hyperlink to the TOS. Below, there is a blue button labeled “Create Channel.” By clicking “Create Channel,” users agree to abide by the TOS.

8. Based on a review of YouTube’s records pertaining to the plaintiff “Sarah” in *Unknown Party v. Google LLC et al.*, 1:23-cv-00223-HYJ-SJB (W.D. Mich.), she created YouTube channels on February 23, 2013 and February 6, 2015. YouTube’s records reflect that when she did so, she affirmatively clicked a button indicating her acceptance of and agreement to be bound by the TOS.

9. YouTube also requires users to confirm their agreement to the TOS in other ways. For example, YouTube occasionally blocks a user from using the service until they affirmatively click a button indicating their agreement to the TOS. YouTube’s records reflect that this happened to “Sarah” on November 6, 2019 and November 25, 2019, and that she affirmatively clicked a button indicating her acceptance of the TOS again on those dates.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 12, 2023, in San Leandro, California.

A handwritten signature in black ink, appearing to read 'Raquel', is written over a horizontal line.

Raquel Small

# Exhibit A





# Terms of Service

## Terms of Service

[Paid Service Terms of Service](#)

[Paid Service Usage Rules](#)

[Collecting Society Notices](#)

[Copyright Notices](#)

[Community Guidelines](#)

## What's in these terms?

This index is designed to help you understand some of the key updates we've made to our Terms of Service (Terms). We hope this serves as a useful guide, but please ensure you read the Terms in full.

### Welcome to YouTube!

This section outlines our relationship with you. It includes a description of the Service, defines our Agreement, and names your service provider.

### Who May Use the Service?

This section sets out certain requirements for use of the Service, and defines categories of users.

### Your Use of the Service

This section explains your rights to use the Service, and the conditions that apply to your use of the Service. It also explains how we may make changes to the Service.

### Your Content and Conduct

This section applies to users who provide Content to the Service. It defines the scope of the permissions that you grant by uploading your Content, and includes your agreement not to upload anything that infringes on anyone else's rights.

### Account Suspension and Termination

This section explains how you and YouTube may terminate this relationship.

### About Software in the Service

This section includes details about software on the Service.

### Other Legal Terms

This section includes our service commitment to you. It also explains that there are some things we will not be responsible for.

### About this Agreement

This section includes some further important details about our contract, including what to expect if we need to make changes to these Terms; or which law applies to them.

## Terms of Service

Dated: January 5, 2022

## TERMS OF SERVICE

## Welcome to YouTube!

### Introduction

Thank you for using the YouTube platform and the products, services and features we make available to you as part of the platform (collectively, the “Service”).

### Our Service

The Service allows you to discover, watch and share videos and other content, provides a forum for people to connect, inform, and inspire others across the globe, and acts as a distribution platform for original content creators and advertisers large and small. We provide lots of information about our products and how to use them in our [Help Center](#).

Among other things, you can find out about [YouTube Kids](#), the [YouTube Partner Program](#) and [YouTube Paid Memberships and Purchases](#) (where available). You can also read all about enjoying content on [other devices like your television, your games console, or Google Home](#).

## Your Service Provider

The entity providing the Service is Google LLC, a company operating under the laws of Delaware, located at 1600 Amphitheatre Parkway, Mountain View, CA 94043 (referred to as “**YouTube**”, “**we**”, “**us**”, or “**our**”). References to YouTube’s “**Affiliates**” in these terms means the other companies within the Alphabet Inc. corporate group (now or in the future).

## Applicable Terms

Your use of the Service is subject to these terms, the [YouTube Community Guidelines](#) and the [Policy, Safety and Copyright Policies](#) which may be updated from time to time (together, this “**Agreement**”). Your Agreement with us will also include the [Advertising on YouTube Policies](#) if you provide advertising or sponsorships to the Service or incorporate paid promotions in your content. Any other links or references provided in these terms are for informational use only and are not part of the Agreement.

Please read this Agreement carefully and make sure you understand it. If you do not understand the Agreement, or do not accept any part of it, then you may not use the Service.

## Who may use the Service?

### Age Requirements

You must be at least 13 years old to use the Service; however, children of all ages may use the Service and YouTube Kids (where available) if enabled by a parent or legal guardian.

### Permission by Parent or Guardian

If you are under 18, you represent that you have your parent or guardian's permission to use the Service. Please have them read this Agreement with you.

If you are a parent or legal guardian of a user under the age of 18, by allowing your child to use the Service, you are subject to the terms of this Agreement and responsible for your child's activity on the Service. You can find tools and resources to help you manage your family's experience on YouTube (including how to enable a child under the age of 13 to use the Service and YouTube Kids) in our [Help Center](#) and through Google's [Family Link](#).

### **Businesses**

If you are using the Service on behalf of a company or organisation, you represent that you have authority to act on behalf of that entity, and that such entity accepts this Agreement.

## **Your Use of the Service**

### **Content on the Service**

The content on the Service includes videos, audio (for example music and other sounds), graphics, photos, text (such as comments and scripts), branding (including trade names, trademarks, service marks, or logos), interactive features, software, metrics, and other materials whether provided by you, YouTube or a third-party (collectively, "Content").

Content is the responsibility of the person or entity that provides it to the Service. YouTube is under no obligation to host or serve Content. If you see any Content you believe does not comply with this Agreement, including by violating the [Community Guidelines](#) or the law, you can [report it to us](#).

### **Google Accounts and YouTube Channels**

You can use parts of the Service, such as browsing and searching for Content, without having a [Google account](#). However, you do need a Google account to use some

features. With a Google account, you may be able to like videos, subscribe to channels, create your own YouTube channel, and more. You can follow these instructions to [create a Google account](#).

Creating a YouTube channel will give you access to additional features and functions, such as uploading videos, making comments or creating playlists (where available). Here are some details about how to [create your own YouTube channel](#).

To protect your Google account, keep your password confidential. You should not reuse your Google account password on third-party applications. Learn more about [keeping your Google account secure](#), including what to do if you learn of any unauthorized use of your password or Google account.

### **Your Information**

Our [Privacy Policy](#) explains how we treat your personal data and protect your privacy when you use the Service. The [YouTube Kids Privacy Notice](#) provides additional information about our privacy practices that are specific to YouTube Kids.

We will process any audio or audiovisual content uploaded by you to the Service in accordance with the [YouTube Data Processing Terms](#), except in cases where you uploaded such content for personal purposes or household activities. [Learn More](#).

### **Permissions and Restrictions**

You may access and use the Service as made available to you, as long as you comply with this Agreement and applicable law. You may view or listen to Content for your personal, non-commercial use. You may also show YouTube videos through the embeddable YouTube player.

The following restrictions apply to your use of the Service. You are not allowed to:

1. access, reproduce, download, distribute, transmit, broadcast, display, sell, license, alter, modify or otherwise use any part of the Service or any Content except: (a) as expressly authorized by the Service; or (b) with prior written permission from YouTube and, if applicable, the respective rights holders;
2. circumvent, disable, fraudulently engage with, or otherwise interfere with any part of the Service (or attempt to do any of these things), including security-related features or features that (a) prevent or restrict the copying or other use of Content or (b) limit the use of the Service or Content;
3. access the Service using any automated means (such as robots, botnets or scrapers) except (a) in the case of public search engines, in accordance with YouTube's robots.txt file; or (b) with YouTube's prior written permission;
4. collect or harvest any information that might identify a person (for example, usernames or faces), unless permitted by that person or allowed under section (3) above;
5. use the Service to distribute unsolicited promotional or commercial content or other unwanted or mass solicitations;
6. cause or encourage any inaccurate measurements of genuine user engagement with the Service, including by paying people or providing them with incentives to increase a video's views, likes, or dislikes, or to increase a channel's subscribers, or otherwise manipulate metrics in any manner;
7. misuse any reporting, flagging, complaint, dispute, or appeals process, including by making groundless, vexatious, or frivolous submissions;
8. run contests on or through the Service that do not comply with [YouTube's contest policies and guidelines](#);

9. use the Service to view or listen to Content other than for personal, non-commercial use (for example, you may not publicly screen videos or stream music from the Service); or

10. use the Service to (a) sell any advertising, sponsorships, or promotions placed on, around, or within the Service or Content, other than those allowed in the [Advertising on YouTube](#) policies (such as compliant product placements); or (b) sell advertising, sponsorships, or promotions on any page of any website or application that only contains Content from the Service or where Content from the Service is the primary basis for such sales (for example, selling ads on a webpage where YouTube videos are the main draw for users visiting the webpage).

## Reservation

Using the Service does not give you ownership of or rights to any aspect of the Service, including user names or any other Content posted by others or YouTube.

## Develop, Improve and Update the Service

YouTube is constantly changing and improving the Service. As part of this continual evolution, we may make modifications or changes (to all or part of the Service) such as adding or removing features and functionalities, offering new digital content or services or discontinuing old ones. We may also need to alter or discontinue the Service, or any part of it, in order to make performance or security improvements, make changes to comply with law, or prevent illegal activities on or abuse of our systems. These changes may affect all users, some users or even an individual user. When the Service requires or includes downloadable software (such as the YouTube Studio application), that software may update automatically on your device once a new version or feature is available, subject to your device settings. If we make material changes that negatively impact your use of the Service, we'll provide you with reasonable advance notice, except in urgent

situations such as preventing abuse, responding to legal requirements, or addressing security and operability issues. We'll also provide you with an opportunity to export your content from your Google Account using [Google Takeout](#), subject to applicable law and policies.

## Your Content and Conduct

### Uploading Content

If you have a YouTube channel, you may be able to upload Content to the Service. You may use your Content to promote your business or artistic enterprise. If you choose to upload Content, you must not submit to the Service any Content that does not comply with this Agreement (including the [YouTube Community Guidelines](#)) or the law. For example, the Content you submit must not include third-party intellectual property (such as copyrighted material) unless you have permission from that party or are otherwise legally entitled to do so. You are legally responsible for the Content you submit to the Service. We may use automated systems that analyze your Content to help detect infringement and abuse, such as spam, malware, and illegal content.

### Rights you Grant

You retain ownership rights in your Content. However, we do require you to grant certain rights to YouTube and other users of the Service, as described below.

### License to YouTube

By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, sublicensable and transferable license to use that Content (including to reproduce, distribute, prepare derivative works, display and perform it) in connection with the Service and YouTube's (and its successors' and Affiliates') business, including for the purpose of promoting and redistributing part or all of the Service.



## License to Other Users

You also grant each other user of the Service a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and to use that Content, including to reproduce, distribute, prepare derivative works, display, and perform it, only as enabled by a feature of the Service (such as video playback or embeds). For clarity, this license does not grant any rights or permissions for a user to make use of your Content independent of the Service.

## Duration of License

The licenses granted by you continue for a commercially reasonable period of time after you remove or delete your Content from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted.

## Right to Monetize

You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. Starting November 18, 2020, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube (including for example payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties. If required by law, Google will withhold taxes from such payments.

## Removing Your Content

You may [remove your Content](#) from the Service at any time. You also have the option to [make a copy of your Content](#) before removing it. You must remove your Content if you no longer have the rights required by these terms.

## Removal of Content By YouTube

If any of your Content (1) is in breach of this Agreement or (2) may cause harm to YouTube, our users, or third parties, we reserve the right to remove or take down some or all of such Content in our discretion. We will notify you with the reason for our action unless we reasonably believe that to do so: (a) would breach the law or the direction of a legal enforcement authority or would otherwise risk legal liability for YouTube or our Affiliates; (b) would compromise an investigation or the integrity or operation of the Service; or (c) would cause harm to any user, other third party, YouTube or our Affiliates. You can learn more about reporting and enforcement, including how to appeal on the [Troubleshooting](#) page of our Help Center.

## Community Guidelines Strikes

YouTube operates a system of “strikes” in respect of Content that violates the [YouTube Community Guidelines](#). Each strike comes with varying restrictions and may result in the permanent removal of your channel from YouTube. A full description of how a strike affects your channel is available on the [Community Guidelines Strikes Basics](#) page. If you believe that a strike has been issued in error, you may appeal [here](#).

If your channel has been restricted due to a strike, you must not use another channel to circumvent these restrictions. Violation of this prohibition is a material breach of this Agreement and Google reserves the right to terminate your Google account or your access to all or part of the Service.

## Copyright Protection

We provide information to help copyright holders manage their intellectual property online in our [YouTube Copyright Center](#). If you believe your copyright has been infringed on the Service, please [send us a notice](#).

We respond to notices of alleged copyright infringement according to the process in our [YouTube Copyright Center](#), where you can also find information about how to resolve a copyright strike. YouTube's policies provide for the termination, in appropriate circumstances, of repeat infringers' access to the Service.

## Account Suspension & Termination

### Terminations by You

You may stop using the Service at any time. Follow these [instructions](#) to delete the Service from your Google Account, which involves closing your YouTube channel and removing your data. You also have the option to download a copy of your data first.

### Terminations and Suspensions by YouTube

YouTube reserves the right to suspend or terminate your Google account or your access to all or part of the Service if (a) you materially or repeatedly breach this Agreement; (b) we are required to do so to comply with a legal requirement or a court order; or (c) we reasonably believe that there has been conduct that creates (or could create) liability or harm to any user, other third party, YouTube or our Affiliates.

### Notice for Termination or Suspension

We will notify you with the reason for termination or suspension by YouTube unless we reasonably believe that to do so: (a) would violate the law or the direction of a legal enforcement authority; (b) would compromise an investigation; (c) would compromise the integrity, operation or security of the Service; or (d) would cause harm to any user, other third party, YouTube or our Affiliates.

### Effect of Account Suspension or Termination

If your Google account is terminated or your access to the Service is restricted, you may continue using certain aspects

of the Service (such as viewing only) without an account, and this Agreement will continue to apply to such use. If you believe that the termination or suspension has been made in error, you can [appeal using this form](#).

## About Software in the Service

### Downloadable Software

When the Service requires or includes downloadable software (such as the YouTube Studio application), unless that software is governed by additional terms which provide a license, YouTube gives you a personal, worldwide, royalty-free, non-assignable and non-exclusive license to use the software provided to you by YouTube as part of the Service. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Service as provided by YouTube, in the manner permitted by this Agreement. You are not allowed to copy, modify, distribute, sell, or lease any part of the software, or to reverse-engineer or attempt to extract the source code of that software, unless laws prohibit these restrictions or you have YouTube's written permission.

### Open Source

Some software used in our Service may be offered under an open source license that we make available to you. There may be provisions in an open source license that expressly override some of these terms, so please be sure to read those licenses.

## Other Legal Terms

### Warranty Disclaimer

OTHER THAN AS EXPRESSLY STATED IN THIS AGREEMENT OR AS REQUIRED BY LAW, THE SERVICE IS PROVIDED "AS IS" AND YOUTUBE DOES NOT MAKE ANY SPECIFIC COMMITMENTS OR WARRANTIES ABOUT THE SERVICE. FOR EXAMPLE, WE DON'T MAKE ANY WARRANTIES ABOUT: (A) THE CONTENT PROVIDED THROUGH THE SERVICE; (B) THE SPECIFIC FEATURES OF THE SERVICE, OR ITS ACCURACY, RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR

NEEDS; OR (C) THAT ANY CONTENT YOU SUBMIT WILL BE ACCESSIBLE ON THE SERVICE.

### **Limitation of Liability**

EXCEPT AS REQUIRED BY APPLICABLE LAW, YOUTUBE, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS WILL NOT BE RESPONSIBLE FOR ANY LOSS OF PROFITS, REVENUES, BUSINESS OPPORTUNITIES, GOODWILL, OR ANTICIPATED SAVINGS; LOSS OR CORRUPTION OF DATA; INDIRECT OR CONSEQUENTIAL LOSS; PUNITIVE DAMAGES CAUSED BY:

1. ERRORS, MISTAKES, OR INACCURACIES ON THE SERVICE;
2. PERSONAL INJURY OR PROPERTY DAMAGE RESULTING FROM YOUR USE OF THE SERVICE;
3. ANY UNAUTHORIZED ACCESS TO OR USE OF THE SERVICE;
4. ANY INTERRUPTION OR CESSATION OF THE SERVICE;
5. ANY VIRUSES OR MALICIOUS CODE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY;
6. ANY CONTENT WHETHER SUBMITTED BY A USER OR YOUTUBE, INCLUDING YOUR USE OF CONTENT; AND/OR
7. THE REMOVAL OR UNAVAILABILITY OF ANY CONTENT.

THIS PROVISION APPLIES TO ANY CLAIM, REGARDLESS OF WHETHER THE CLAIM ASSERTED IS BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

YOUTUBE AND ITS AFFILIATES' TOTAL LIABILITY FOR ANY CLAIMS ARISING FROM OR RELATING TO THE SERVICE IS LIMITED TO THE GREATER OF: (A) THE AMOUNT OF REVENUE THAT YOUTUBE HAS PAID TO YOU FROM YOUR USE OF THE SERVICE IN THE 12 MONTHS BEFORE THE DATE OF YOUR NOTICE, IN WRITING TO YOUTUBE, OF THE CLAIM; AND (B) USD \$500.

## Indemnity

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its Affiliates, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of this Agreement; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive this Agreement and your use of the Service.

## Third-Party Links

The Service may contain links to third-party websites and online services that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, such websites and online services. Be aware when you leave the Service; we suggest you read the terms and privacy policy of each third-party website and online service that you visit.

## About this Agreement

### Changing this Agreement

We may change this Agreement, for example, (1) to reflect changes to our Service or how we do business - for example, when we add new products or features or remove old ones, (2) for legal, regulatory, or security reasons, or (3) to prevent abuse or harm.

If we materially change this Agreement, we'll provide you with reasonable advance notice and the opportunity to review the changes, except (1) when we launch a new product or feature, or (2) in urgent situations, such as preventing ongoing abuse or responding to legal requirements. If you don't agree to the new terms, you should remove any Content you uploaded and stop using the Service.

### **Continuation of this Agreement**

If your use of the Service ends, the following terms of this Agreement will continue to apply to you: “Other Legal Terms”, “About This Agreement”, and the licenses granted by you will continue as described under “Duration of License”.

### **Severance**

If it turns out that a particular term of this Agreement is not enforceable for any reason, this will not affect any other terms.

### **No Waiver**

If you fail to comply with this Agreement and we do not take immediate action, this does not mean that we are giving up any rights that we may have (such as the right to take action in the future).

### **Interpretation**

In these terms, “include” or “including” means “including but not limited to,” and any examples we give are for illustrative purposes.

### **Governing Law**

All claims arising out of or relating to these terms or the Service will be governed by California law, except California’s conflict of laws rules, and will be litigated exclusively in the federal or state courts of Santa Clara County, California, USA. You and YouTube consent to personal jurisdiction in those courts.

### **Limitation on Legal Action**

YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Effective as of January 5, 2022 ([view previous version](#))





# Exhibit B

# Terms of Service

## [Community Guidelines](#)

### 1. Your Acceptance

- A. By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Google's Privacy Policy, found at <http://www.youtube.com/t/privacy> and incorporated herein by reference, and (3) YouTube's Community Guidelines, found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines) and also incorporated herein by reference. If you do not agree to any of these terms, the Google Privacy Policy, or the Community Guidelines, please do not use the Service.
- B. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version <http://www.youtube.com/t/terms>). YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms of Service shall be deemed to confer any third-party rights or benefits.

### 2. Service

- A. These Terms of Service apply to all users of the Service, including users who are also contributors of Content on the Service. "Content" includes the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials you may view on, access through, or contribute to the Service. The Service includes all aspects of YouTube, including but not limited to all products, software and services offered via the YouTube website, such as the YouTube channels, the YouTube "Embeddable Player," the YouTube "Uploader" and other applications.
- B. The Service may contain links to third party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, YouTube will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.
- C. Accordingly, we encourage you to be aware when you leave the Service and to read the terms and conditions and privacy policy of each other website that you visit.

### 3. YouTube Accounts

- A. In order to access some features of the Service, you will have to create a YouTube or Google account. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify YouTube immediately of any breach of security or unauthorized use of your account.
- B. Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.

### 4. General Use of the Service—Permissions and Restrictions

YouTube hereby grants you permission to access and use the Service as set forth in these Terms of Service, provided that:

- A. You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).
- B. You agree not to alter or modify any part of the Service.
- C. You agree not to access Content through any technology or means other than the video playback pages of the Service itself, the Embeddable Player, or other explicitly authorized means YouTube may designate.
- D. You agree not to use the Service for any of the following commercial uses unless you obtain YouTube's prior written approval:
  - the sale of access to the Service;
  - the sale of advertising, sponsorships, or promotions placed on or within the Service or Content; or
  - the sale of advertising, sponsorships, or promotions on any page of an ad-enabled blog or website containing Content delivered via the Service, unless other material not obtained from YouTube appears on the same page and is of sufficient value to be the basis for such sales.
- E. Prohibited commercial uses do not include:
  - uploading an original video to YouTube, or maintaining an original channel on YouTube, to promote your business or artistic enterprise;
  - showing YouTube videos through the Embeddable Player on an ad-enabled blog or website, subject to the advertising restrictions set forth above in Section 4.D; or
  - any use that YouTube expressly authorizes in writing.

(For more information about what constitutes a prohibited commercial use, [see our FAQ.](#))

- F. If you use the Embeddable Player on your website, you may not modify, build upon, or block any portion or functionality of the Embeddable Player, including but not limited to links back to the YouTube website.
- G. If you use the YouTube Uploader, you agree that it may automatically download and install updates from time to time from YouTube. These updates are designed to improve, enhance and further develop the Uploader and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit YouTube to deliver these to you) as part of your use of the Uploader.
- H. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Service in a manner that sends more request messages to the YouTube servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, YouTube grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. YouTube reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Service, nor to use the communication systems provided by the Service (e.g., comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Service with respect to their Content.
- I. In your use of the Service, you will comply with all applicable laws.
- J. YouTube reserves the right to discontinue any aspect of the Service at any time.

## 5. Your Use of Content

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of Content.

- A. The Content on the Service, and the trademarks, service marks and logos ("Marks") on the Service, are owned by or licensed to YouTube, subject to copyright and other intellectual property rights under the law.
- B. Content is provided to you AS IS. You may access Content for your information and personal use solely as intended through the provided functionality of the Service and as permitted under these Terms of Service. You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content.
- C. You agree not to circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Service or the Content therein.

- D. You understand that when using the Service, you will be exposed to Content from a variety of sources, and that YouTube is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Content. You further understand and acknowledge that you may be exposed to Content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YouTube with respect thereto, and, to the extent permitted by applicable law, agree to indemnify and hold harmless YouTube, its owners, operators, affiliates, licensors, and licensees to the fullest extent allowed by law regarding all matters related to your use of the Service.

## **6. Your Content and Conduct**

- A. As a YouTube account holder you may submit Content to the Service, including videos and user comments. You understand that YouTube does not guarantee any confidentiality with respect to any Content you submit.
- B. You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service.
- C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.
- D. You further agree that Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant YouTube all of the license rights granted herein.
- E. You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at

[http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.

- F. YouTube does not endorse any Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with Content. YouTube does not permit copyright infringing activities and infringement of intellectual property rights on the Service, and YouTube will remove all Content if properly notified that such Content infringes on another's intellectual property rights. YouTube reserves the right to remove Content without prior notice.

## **7. Account Termination Policy**

- A. YouTube will terminate a user's access to the Service if, under appropriate circumstances, the user is determined to be a repeat infringer.
- B. YouTube reserves the right to decide whether Content violates these Terms of Service for reasons other than copyright infringement, such as, but not limited to, pornography, obscenity, or excessive length. YouTube may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation of these Terms of Service.

## **8. Digital Millennium Copyright Act**

- A. If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):
- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
  - Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
  - Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
  - Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
  - A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
  - A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.



YouTube's designated Copyright Agent to receive notifications of claimed infringement is Shadie Farazian, 901 Cherry Ave., San Bruno, CA 94066, email: [copyright@youtube.com](mailto:copyright@youtube.com), fax: 650-872-8513. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YouTube customer service through <http://www.google.com/support/youtube>. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

B. Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent:

- Your physical or electronic signature;
- Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
- A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
- Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, YouTube may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at YouTube's sole discretion.

## **9. Warranty Disclaimer**

YOU AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES AND YOUR USE THEREOF. YOUTUBE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF

CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES. YOUTUBE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND YOUTUBE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## **10. Limitation of Liability**

IN NO EVENT SHALL YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (IV) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (V) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.



YOU SPECIFICALLY ACKNOWLEDGE THAT YOUTUBE SHALL NOT BE LIABLE FOR CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

The Service is controlled and offered by YouTube from its facilities in the United States of America. YouTube makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are responsible for compliance with local law.

## **11. Indemnity**

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service.

## **12. Ability to Accept Terms of Service**

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

## **13. Assignment**

These Terms of Service, and any rights and licenses granted hereunder, may not be transferred or assigned by you, but may be assigned by YouTube without restriction.

## **14. General**

You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive website that does not give rise to personal jurisdiction over YouTube, either specific or general, in jurisdictions other than California. These Terms of Service shall be

governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County, California. These Terms of Service, together with the Privacy Notice at <http://www.youtube.com/t/privacy> and any other legal notices published by YouTube on the Service, shall constitute the entire agreement between you and YouTube concerning the Service. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of this these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and YouTube's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. YouTube reserves the right to amend these Terms of Service at any time and without notice, and it is your responsibility to review these Terms of Service for any changes. Your use of the Service following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms. YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**Dated: June 9, 2010**

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# Exhibit C

# Terms of Service

## 1. Your Acceptance

- A. By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Google's Privacy Policy, found at <http://www.youtube.com/t/privacy> and incorporated herein by reference, and (3) YouTube's Community Guidelines, found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines) and also incorporated herein by reference. If you do not agree to any of these terms, the Google Privacy Policy, or the Community Guidelines, please do not use the Service.
- B. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version (<http://www.youtube.com/t/terms>). YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms of Service shall be deemed to confer any third-party rights or benefits.

## 2. Service

- A. These Terms of Service apply to all users of the Service, including users who are also contributors of Content on the Service. "Content" includes the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials you may view on, access through, or contribute to the Service. The Service includes all aspects of YouTube, including but not limited to all products, software and services offered via the YouTube website, such as the YouTube channels, the YouTube "Embeddable Player," the YouTube "Uploader" and other applications.
- B. The Service may contain links to third party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, YouTube will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.
- C. Accordingly, we encourage you to be aware when you leave the Service and to read the terms and conditions and privacy policy of each other website that you visit.

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- B. Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.

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- A. You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).
- B. You agree not to alter or modify any part of the Service.
- C. You agree not to access Content through any technology or means other than the video playback pages of the Service itself, the Embeddable Player, or other explicitly authorized means YouTube may designate.
- D. You agree not to use the Service for any of the following commercial uses unless you obtain YouTube's prior written approval:
  - o the sale of access to the Service;
  - o the sale of advertising, sponsorships, or promotions placed on or within the Service or Content; or
  - o the sale of advertising, sponsorships, or promotions on any page of an ad-enabled blog or website containing Content delivered via the Service, unless other material not obtained from YouTube appears on the same page and is of sufficient value to be the basis for such sales.
- E. Prohibited commercial uses do not include:
  - o uploading an original video to YouTube, or maintaining an original channel on YouTube, to promote your business or artistic enterprise;
  - o showing YouTube videos through the Embeddable Player on an ad-enabled blog or website, subject to the advertising restrictions set forth above in Section 4.D; or
  - o any use that YouTube expressly authorizes in writing.
 (For more information about what constitutes a prohibited commercial use, see our FAQ.)
- F. If you use the Embeddable Player on your website, you may not modify, build upon, or block any portion or functionality of the Embeddable Player, including but not limited to links back to the YouTube website.
- G. If you use the YouTube Uploader, you agree that it may automatically download and install updates from time to time from YouTube. These updates are designed to improve, enhance and further develop the Uploader and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit YouTube to deliver these to you) as part of your use of the Uploader.
- H. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Service in a manner that sends more request messages to the YouTube servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, YouTube grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. YouTube reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Service, nor to use the communication systems provided by the Service (e.g., comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Service with respect to their Content.
- I. In your use of the Service, you will comply with all applicable laws.
- J. YouTube reserves the right to discontinue any aspect of the Service at any time.

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- A. The Content on the Service, and the trademarks, service marks and logos ("Marks") on the Service, are owned by or licensed to YouTube, subject to copyright and other intellectual property rights under the law.
- B. Content is provided to you AS IS. You may access Content for your information and personal use solely as intended through the provided functionality of the Service and as permitted under these Terms of Service. You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content.
- C. You agree not to circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Service or the Content therein.
- D. You understand that when using the Service, you will be exposed to Content from a variety of sources, and that YouTube is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Content. You further understand and acknowledge that you may be exposed to Content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YouTube with respect thereto, and, to the extent permitted by applicable law, agree to indemnify and hold harmless YouTube, its owners, operators, affiliates, licensors, and licensees to the fullest extent allowed by law regarding all matters related to your use of the Service.

## 6. Your Content and Conduct

- A. As a YouTube account holder you may submit Content to the Service, including videos and user comments. You understand that YouTube does not guarantee any confidentiality with respect to any Content you submit.
- B. You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service.
- C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.
- D. You further agree that Content you submit to the Service will not contain third party copyrighted material, or material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant YouTube all of the license rights granted herein.
- E. You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at [http://www.youtube.com/t/community\\_guidelines](http://www.youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.
- F. YouTube does not endorse any Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with Content. YouTube does not permit copyright infringing activities and infringement of intellectual property rights on the Service, and YouTube will remove all Content if properly notified that such Content infringes on another's intellectual property rights. YouTube reserves the right to remove Content without prior notice.

## 7. Account Termination Policy

- A. YouTube will terminate a user's access to the Service if, under appropriate circumstances, the user is determined to be a repeat infringer.
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- A. If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):
  - o A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
  - o Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
  - o Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
  - o Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
  - o A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
  - o A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

YouTube's designated Copyright Agent to receive notifications of claimed infringement is Shadie Farazian, 901 Cherry Ave., San Bruno, CA 94066, email: [copyright@youtube.com](mailto:copyright@youtube.com), fax: 650-872-8513. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YouTube customer service through <http://www.google.com/support/youtube>. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

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B. Counter-Notice. If you believe that your Content that was removed or to which access was disabled is not infringing or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent:

- o Your physical or electronic signature;
- o Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
- o A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
- o Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the federal court in San Francisco, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, YouTube may send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at YouTube's sole discretion.

## 9. Warranty Disclaimer

YOU AGREE THAT YOUR USE OF THE SERVICES SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES AND YOUR USE THEREOF. YOUTUBE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THIS SITE'S CONTENT OR THE CONTENT OF ANY SITES LINKED TO THIS SITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES. YOUTUBE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICES OR ANY HYPERLINKED SERVICES OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND YOUTUBE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

## 10. Limitation of Liability

IN NO EVENT SHALL YOUTUBE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR SERVICES, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM OUR SERVICES, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH OUR SERVICES BY ANY THIRD PARTY, AND/OR (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SERVICES, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT THE COMPANY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

YOU SPECIFICALLY ACKNOWLEDGE THAT YOUTUBE SHALL NOT BE LIABLE FOR CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY AND THAT THE RISK OF HARM OR DAMAGE FROM THE FOREGOING RESTS ENTIRELY WITH YOU.

The Service is controlled and offered by YouTube from its facilities in the United States of America. YouTube makes no representations that the Service is appropriate or available for use in other locations. Those who access or use the Service from other jurisdictions do so at their own volition and are responsible for compliance with local law.

## 11. Indemnity

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service.

## 12. Ability to Accept Terms of Service

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

## 13. Assignment

These Terms of Service and any rights and licenses granted hereunder, may not be transferred or assigned by you but may be assigned by YouTube without restriction.

## 14. General

You agree that: (i) the Service shall be deemed solely based in California; and (ii) the Service shall be deemed a passive website that does not give rise to personal jurisdiction over YouTube, either specific or general, in jurisdictions other than California. These Terms of Service shall be governed by the internal substantive laws of the State of California, without respect to its conflict of laws principles. Any claim or dispute between you and YouTube that arises in whole or in part from the Service shall be decided exclusively by a court of competent jurisdiction located in Santa Clara County, California. These Terms of Service, together with the Privacy Notice at <http://www.youtube.com/t/privacy> and any other legal notices published by YouTube on the Service, shall constitute the entire agreement between you and YouTube concerning the Service. If any provision of these Terms of Service is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms of Service, which shall remain in full force and effect. No waiver of any term of this these Terms of Service shall be deemed a further or continuing waiver of such term or any other term, and YouTube's failure to assert any right or provision under these Terms of Service shall not constitute a waiver of such right or provision. YouTube reserves the right to amend these Terms of Service at any time and without notice, and it is your responsibility to review these Terms of Service for any changes. Your use of the Service following any amendment of these Terms of Service will signify your assent to and acceptance of its revised terms. YOU AND YOUTUBE AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

**Dated: June 9, 2010**

# Exhibit D





# Terms of Service

## Terms of Service

[Paid Service Terms of Service](#)

[Paid Service Usage Rules](#)

[Collecting Society Notices](#)

[Copyright Notices](#)

[Community Guidelines](#)

## 1. Your Acceptance

- A. By using or visiting the YouTube website or any YouTube products, software, data feeds, and services provided to you on, from, or through the YouTube website (collectively the "Service") you signify your agreement to (1) these terms and conditions (the "Terms of Service"), (2) Google's Privacy Policy, found at <https://www.youtube.com/t/privacy> and incorporated herein by reference, and (3) YouTube's Community Guidelines, found at [https://www.youtube.com/t/community\\_guidelines](https://www.youtube.com/t/community_guidelines) and also incorporated herein by reference. If you do not agree to any of these terms, the Google Privacy Policy, or the Community Guidelines, please do not use the Service.
- B. Although we may attempt to notify you when major changes are made to these Terms of Service, you should periodically review the most up-to-date version (<https://www.youtube.com/t/terms>). YouTube may, in its sole discretion, modify or revise these Terms of Service and policies at any time, and you agree to be bound by such modifications or revisions. Nothing in these Terms of Service shall be deemed to confer any third-party rights or benefits.

## 2. Service

- A. These Terms of Service apply to all users of the Service, including users who are also contributors of Content on the Service. "Content" includes the text, software, scripts, graphics, photos, sounds, music, videos, audiovisual combinations, interactive features and other materials you may view on, access through, or contribute to the Service. The Service includes all aspects of YouTube, including but not limited to all products, software and services offered via the YouTube website, such as the

YouTube channels, the YouTube "Embeddable Player," the YouTube "Uploader" and other applications.

- B. The Service may contain links to third party websites that are not owned or controlled by YouTube. YouTube has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, YouTube will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly relieve YouTube from any and all liability arising from your use of any third-party website.
- C. Accordingly, we encourage you to be aware when you leave the Service and to read the terms and conditions and privacy policy of each other website that you visit.

### **3. YouTube Accounts**

- A. In order to access some features of the Service, you will have to create a YouTube or Google Account. You may never use another's account without permission. When creating your account, you must provide accurate and complete information. You are solely responsible for the activity that occurs on your account, and you must keep your account password secure. You must notify YouTube immediately of any breach of security or unauthorized use of your account.
- B. Although YouTube will not be liable for your losses caused by any unauthorized use of your account, you may be liable for the losses of YouTube or others due to such unauthorized use.

### **4. General Use of the Service—Permissions and Restrictions**

YouTube hereby grants you permission to access and use the Service as set forth in these Terms of Service, provided that:

- A. You agree not to distribute in any medium any part of the Service or the Content without YouTube's prior written authorization, unless YouTube makes available the means for such distribution through functionality offered by the Service (such as the Embeddable Player).

- B. You agree not to alter or modify any part of the Service.
- C. You agree not to access Content through any technology or means other than the video playback pages of the Service itself, the Embeddable Player, or other explicitly authorized means YouTube may designate.
- D. You agree not to use the Service for any of the following commercial uses unless you obtain YouTube's prior written approval:
  - the sale of access to the Service;
  - the sale of advertising, sponsorships, or promotions placed on or within the Service or Content; or
  - the sale of advertising, sponsorships, or promotions on any page of an ad-enabled blog or website containing Content delivered via the Service, unless other material not obtained from YouTube appears on the same page and is of sufficient value to be the basis for such sales.
- E. Prohibited commercial uses do not include:
  - uploading an original video to YouTube, or maintaining an original channel on YouTube, to promote your business or artistic enterprise;
  - showing YouTube videos through the Embeddable Player on an ad-enabled blog or website, subject to the advertising restrictions set forth above in Section 4.D; or
  - any use that YouTube expressly authorizes in writing.

(For more information about what constitutes a prohibited commercial use, [see our FAQ.](#))

- F. If you use the Embeddable Player on your website, you may not modify, build upon, or block any portion or functionality of the Embeddable Player, including but not limited to links back to the YouTube website.
- G. If you use the YouTube Uploader, you agree that it may automatically download and install updates from time to

time from YouTube. These updates are designed to improve, enhance and further develop the Uploader and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit YouTube to deliver these to you) as part of your use of the Uploader.

H. You agree not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Service in a manner that sends more request messages to the YouTube servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Notwithstanding the foregoing, YouTube grants the operators of public search engines permission to use spiders to copy materials from the site for the sole purpose of and solely to the extent necessary for creating publicly available searchable indices of the materials, but not caches or archives of such materials. YouTube reserves the right to revoke these exceptions either generally or in specific cases. You agree not to collect or harvest any personally identifiable information, including account names, from the Service, nor to use the communication systems provided by the Service (e.g., comments, email) for any commercial solicitation purposes. You agree not to solicit, for commercial purposes, any users of the Service with respect to their Content.

I. In your use of the Service, you will comply with all applicable laws.

J. YouTube reserves the right to discontinue any aspect of the Service at any time.

## 5. Your Use of Content

In addition to the general restrictions above, the following restrictions and conditions apply specifically to your use of Content.

- A. The Content on the Service, and the trademarks, service marks and logos ("Marks") on the Service, are owned by or licensed to YouTube, subject to copyright and other intellectual property rights under the law.
- B. Content is provided to you AS IS. You may access Content for your information and personal use solely as intended through the provided functionality of the Service and as permitted under these Terms of Service. You shall not download any Content unless you see a "download" or similar link displayed by YouTube on the Service for that Content. You shall not copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any Content for any other purposes without the prior written consent of YouTube or the respective licensors of the Content. YouTube and its licensors reserve all rights not expressly granted in and to the Service and the Content.
- C. You agree not to circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any Content or enforce limitations on use of the Service or the Content therein.
- D. You understand that when using the Service, you will be exposed to Content from a variety of sources, and that YouTube is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Content. You further understand and acknowledge that you may be exposed to Content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against YouTube with respect thereto, and, to the extent permitted by applicable law, agree to indemnify and hold harmless YouTube, its owners, operators, affiliates, licensors, and licensees to the fullest extent allowed by law regarding all matters related to your use of the Service.

## 6. Your Content and Conduct

- A. As a YouTube account holder you may submit Content to the Service, including videos and user comments. You understand that YouTube does not guarantee any confidentiality with respect to any Content you submit.
- B. You shall be solely responsible for your own Content and the consequences of submitting and publishing your Content on the Service. You affirm, represent, and warrant that you own or have the necessary licenses, rights, consents, and permissions to publish Content you submit; and you license to YouTube all patent, trademark, trade secret, copyright or other proprietary rights in and to such Content for publication on the Service pursuant to these Terms of Service.
- C. For clarity, you retain all of your ownership rights in your Content. However, by submitting Content to YouTube, you hereby grant YouTube a worldwide, non-exclusive, royalty-free, sublicenseable and transferable license to use, reproduce, distribute, prepare derivative works of, display, and perform the Content in connection with the Service and YouTube's (and its successors' and affiliates') business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels. You also hereby grant each user of the Service a non-exclusive license to access your Content through the Service, and to use, reproduce, distribute, display and perform such Content as permitted through the functionality of the Service and under these Terms of Service. The above licenses granted by you in video Content you submit to the Service terminate within a commercially reasonable time after you remove or delete your videos from the Service. You understand and agree, however, that YouTube may retain, but not display, distribute, or perform, server copies of your videos that have been removed or deleted. The above licenses granted by you in user comments you submit are perpetual and irrevocable.
- D. You further agree that Content you submit to the Service will not contain third party copyrighted material, or

material that is subject to other third party proprietary rights, unless you have permission from the rightful owner of the material or you are otherwise legally entitled to post the material and to grant YouTube all of the license rights granted herein.

- E. You further agree that you will not submit to the Service any Content or other material that is contrary to the YouTube Community Guidelines, currently found at [https://www.youtube.com/t/community\\_guidelines](https://www.youtube.com/t/community_guidelines), which may be updated from time to time, or contrary to applicable local, national, and international laws and regulations.
- F. YouTube will process any audio or audiovisual content uploaded by you to the Service in accordance with the YouTube Data Processing Terms ([www.youtube.com/t/terms\\_dataprocessing](http://www.youtube.com/t/terms_dataprocessing)), except in cases where you uploaded such content for personal purposes or household activities. Learn more here: [support.google.com/youtube/?p=data\\_applicability](http://support.google.com/youtube/?p=data_applicability).
- G. YouTube does not endorse any Content submitted to the Service by any user or other licensor, or any opinion, recommendation, or advice expressed therein, and YouTube expressly disclaims any and all liability in connection with Content. YouTube does not permit copyright infringing activities and infringement of intellectual property rights on the Service, and YouTube will remove all Content if properly notified that such Content infringes on another's intellectual property rights. YouTube reserves the right to remove Content without prior notice.

## 7. Account Termination Policy

- A. YouTube will terminate a user's access to the Service if, under appropriate circumstances, the user is determined to be a repeat infringer.
- B. YouTube reserves the right to decide whether Content violates these Terms of Service for reasons other than copyright infringement, such as, but not limited to,

pornography, obscenity, or excessive length. YouTube may at any time, without prior notice and in its sole discretion, remove such Content and/or terminate a user's account for submitting such material in violation of these Terms of Service.

## 8. Digital Millennium Copyright Act

- A. If you are a copyright owner or an agent thereof and believe that any Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C 512(c)(3) for further detail):
- A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
  - Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
  - Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
  - Information reasonably sufficient to permit the service provider to contact you, such as an address, telephone number, and, if available, an electronic mail;
  - A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
  - A statement that the information in the notification is accurate, and under penalty of perjury, that you are



authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

You may direct copyright infringement notifications to our DMCA Agent at 901 Cherry Ave., San Bruno, CA 94066, email: [copyright@youtube.com](mailto:copyright@youtube.com), fax: 650-872-8513. For clarity, only DMCA notices should go to the Copyright Agent; any other feedback, comments, requests for technical support, and other communications should be directed to YouTube customer service through <https://support.google.com/youtube>. You acknowledge that if you fail to comply with all of the requirements of this Section 5(D), your DMCA notice may not be valid.

- B. Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent:
- Your physical or electronic signature;
  - Identification of the Content that has been removed or to which access has been disabled and the location at which the Content appeared before it was removed or disabled;
  - A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and
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#### **11. Indemnity**

To the extent permitted by applicable law, you agree to defend, indemnify and hold harmless YouTube, its parent corporation, officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Service; (ii) your violation of any term of these Terms of Service; (iii) your violation of any third party right, including without limitation any copyright, property, or privacy right; or (iv) any claim that your Content caused damage to a third party. This defense and indemnification obligation will survive these Terms of Service and your use of the Service.

#### **12. Ability to Accept Terms of Service**

You affirm that you are either more than 18 years of age, or an emancipated minor, or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, obligations, affirmations, representations, and warranties set forth in these Terms of Service, and to abide by and comply with these Terms of Service. In any case, you affirm that you are over the age of 13, as the Service is not intended for children under 13. If you are under 13 years of age, then please do not use the Service. There are lots of other great web sites for you. Talk to your parents about what sites are appropriate for you.

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**Effective as of May 25, 2018**